



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Fort Steuben Enterprises
File: B-233746
Date: December 22, 1988

DIGEST

A bid which does not comply with a solicitation requirement for a bid guarantee must be rejected as nonresponsive where none of the exceptions for rejection provided in the regulations are applicable.

DECISION

Fort Steuben Enterprises protests the Department of Justice's (DOJ) rejection of its low bid under invitation for bids (IFB) No. 103-106. Fort Steuben's bid was rejected as nonresponsive because the IFB required the submission of a bid bond in the amount of 20 percent of the total bid price and Fort Steuben offered a bid bond in the amount of 5 percent of its bid price.

We dismiss the protest.

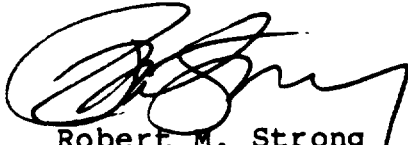
The IFB states that "A bid bond in the amount of 20 percent of the total bid price . . . , but not more than \$3,000,000 shall be submitted with the offeror's bid package or the bid may be rejected as nonresponsive." Fort Steuben claims that the phrase "the bid may be rejected" makes DOJ's decision to reject discretionary. Fort Steuben concludes that DOJ should therefore award the contract to it in light of the increase in cost between it and the next higher acceptable bid and the protester's high reputation in the industry.

The Federal Acquisition Regulation (FAR) requires the rejection of a bid that does not comply with the solicitation requirement for a bid guarantee. FAR § 14.404-2(i). Such a bid is nonresponsive and may not be considered except under circumstances that are not applicable to this case. FAR § 28.101-4. It is these special circumstances to

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which the language in question refers. The decision to reject the bid or to waive the deficiency under the limited circumstances set forth in the regulation is not discretionary. Also, see Summit Metal Fabricating, Inc., B-213414, Nov. 15, 1983, 83-2 CPD ¶ 571, where we stated that, in light of the FAR language requiring rejection where a noncompliant bid is submitted, the language in the IFB is "just as compelling as if more positive language were employed."

The protest is dismissed and the protester's request for a conference is denied since it would serve no useful purpose.

A handwritten signature in black ink, appearing to read 'R. Strong', with a large, stylized loop at the end.

Robert M. Strong
Associate General Counsel